

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
08-CR-117A

NORMAN S. CARAWAY,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1)(A). On July 22, 2009, defendant filed a motion to dismiss the indictment. On January 14, 2010, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that defendant's motion to dismiss be denied.

Defendant filed objections to the Report and Recommendation on January 27, 2010 and on February 8, 2010, and the government filed a response thereto on February 22, 2010. Oral argument on the objections was held on April 12, 2010. At oral argument, defendant cited *Arizona v. Gant*, 129 S. Ct. 1710 (2009), a case that does not address inventory searches, but rather searches incident to a lawful arrest. In contrast, "[i]t is well recognized in Supreme Court precedent that, when law enforcement officials take a vehicle into custody, they may search the vehicle and make an inventory of its contents without need for a search warrant and without regard to whether there is probable cause to suspect that the

vehicle contains contraband or evidence of criminal conduct.” *U.S. v. Lopez*, 547 F.3d 364, 369 (2d Cir. 2008) (citations omitted).

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendant's motion to dismiss is denied.

The case is referred back to Magistrate Judge Schroeder for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: April 14, 2010